

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

|                              |   |                           |
|------------------------------|---|---------------------------|
| PLANETSPACE INC.,            | ) |                           |
|                              | ) |                           |
| Plaintiff,                   | ) |                           |
|                              | ) |                           |
| v.                           | ) | No. 09-476C               |
|                              | ) | (Judge Lawrence J. Block) |
| THE UNITED STATES,           | ) |                           |
|                              | ) |                           |
| Defendant.                   | ) |                           |
|                              | ) |                           |
| SPACE EXPLORATION            | ) |                           |
| TECHNOLOGIES CORPORATION,    | ) |                           |
|                              | ) |                           |
| Intervenor, and              | ) |                           |
|                              | ) |                           |
| ORBITAL SCIENCE CORPORATION, | ) |                           |
|                              | ) |                           |
| Intervenor.                  | ) |                           |

**DEFENDANT'S MOTION FOR  
LEAVE TO CORRECT THE ADMINISTRATIVE RECORD**

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests that this Court grant us leave for a second time to correct the administrative record filed on August 13, 2009. Counsel for defendants-intervenors, Space Exploration Technologies and Orbital Science Corporation, have represented that they do not oppose this motion. Counsel for plaintiff, PlanetSpace, Inc., has stated that while it does not oppose the inclusion of Exhibit 1, it will oppose the inclusion of Exhibit 2 in the administrative record.

On Monday, September 14, 2009, it came to Government counsel's attention that two documents related to this bid protest were omitted from the administrative record originally filed. Both documents relate to the evaluation of defendant-intervenor Orbital Science Corporation's ("Orbital") proposal. The Source Evaluation Board ("SEB") for the International Space Station Commercial Resupply Services ("ISS CRS") solicitation based its assessment of Orbital's

compliance with the 2004 United States Space Transportation Policy upon the information contained in these documents. See AR6316 (referring to an earlier review of Orbital's Taurus II). In addition, the contents of these documents were summarized and relayed to the Source Selection Authority. We have attached these documents to this filing as Exhibits 1 and 2.

The first document, Exhibit 1, is an attachment to an email already in the record. See AR25179. The attachment is a one-page summary of the foreign content of Orbital's cargo vehicle. The second document, Exhibit 2, is an inter-agency memorandum that memorializes the Office of Science and Technology Policy's determination with respect to the Taurus II vehicle's eligibility to launch United States payloads without additional exemptions or waivers.

Defendant proposes that the documents be incorporated in the administrative record as follows: Exhibit 1 be labeled "Tab 192" and numbered 31788 and Exhibit 2 be labeled "Tab 193" and numbered 301789. Defendant also proposes that we provide two hard copies of the corrected documents to the Court and electronic copies of the documents to counsel for plaintiff and defendant-intervenors.

For these reasons, defendant respectfully requests that this Court grant defendant leave to correct the administrative record, filed on August 13, 2009, to include the documents referenced above.

Respectfully submitted,

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JEANNE E. DAVIDSON  
Director

s/ Alan J. Lo Re  
ALAN J. LO RE  
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Dated: September 17, 2009

Attorneys for Defendant

**CERTIFICATE OF FILING**

I hereby certify that on the 17<sup>th</sup> day of September, 2009, a copy of the foregoing “DEFENDANT’S MOTION FOR LEAVE TO CORRECT THE ADMINISTRATIVE RECORD” was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

s/ Stacey K. Grigsby